

STATE OF INDIANA)
) SS:
COUNTY OF MIAMI)

IN THE MIAMI _____ COURT
CAUSE NO. **52001- 0611- PL -00456**

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
TODD M. BLACK,)
)
Defendant.)

FILED
NOV 30 2006
Drudy McCrae
Clerk Miami Superior Court

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmueller, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, the Motor Vehicle Information Cost Savings Act, 49 U.S.C. §32709 and Ind. Code §9-19-9-7, for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. Defendant Todd M. Black ("hereinafter "Black") is an individual residing at 2305 West South Street, Peru, Indiana 46970. At all times relevant hereto, Defendant regularly engaged in the advertising and sale of used automobiles.

2. Whenever in this Complaint reference is made to any acts of the aforementioned Defendant, such allegation shall be deemed to mean that the Defendant, his principals, agents, representatives or employees did or authorized such acts while acting within the scope of their duties, employment or agency.

FACTS

3. On or around June 30, 2006, Defendant Black and his associate, Robert Scott, purchased a 1995 Chevrolet pickup truck, vehicle identification number [REDACTED] (hereinafter "pickup") from Wolfe's Auto Sales for \$3,500.00. At the time of purchase, Wolfe's verbally advised Black and Scott that the pick-up's odometer reading was not correct and in writing advised Black and Scott that the pick-up's mileage was "exempt" and "unreliable".

4. On or around July 21, 2006, Black listed the pickup for sale in the July 21 – July 27, 2006 edition of the Indiana Auto & RV magazine. A copy of the advertisement is attached to this complaint as Exhibit "A".

5. Black advertised the pickup as a 2nd owner vehicle having 54,000 miles with an asking price of \$6,500.00.

6. On or around July 24, 2006 in response to the advertisement, Ryan Payne met with Defendant Black to discuss buying the pickup. Black confirmed the pick-up had 54,000 miles and Payne purchased the pickup for \$6,300.00 and took possession of the truck on that date.

7. On the date of sale, Black told Payne that he would mail the title to him at a later date.

8. Sometime after the purchase of the pickup, Payne questioned the pickup's mileage and ran a Carfax report, discovering the truck had five prior owners and in May 2006 had an odometer reading of 203,220 miles.

9. To date, Black has failed to deliver title for the pickup to Mr. Payne as required by Ind. Code §9-17-3-3.

COUNT I: VIOLATIONS OF DECEPTIVE CONSUMER SALES ACT

10. The transaction identified in paragraph 6 is a “consumer transaction” as defined by Ind. Code §24-5-0.5-2(1).

11. Defendant Todd M. Black is a “supplier” as defined in Ind. Code §24-5-0.5-2(3).

12. Defendant’s acts and representations referred to in paragraphs 4, 5, 6, and 7 violate the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1) and (a)(10), as follows:

- a. Black misrepresented the pick-up’s mileage to Payne on July 24, 2006;
- b. Black misrepresented the pick-up’s true mileage in the Indiana Auto & RV advertisement;
- c. Black misrepresented and/or concealed the pick-up’s true mileage by failing to deliver title for the pick-up to Payne;
- d. Black misrepresented and concealed the Dodge’s true mileage by causing to be altered or altering the vehicle’s odometer; and,
- e. Black misrepresented his ability to complete a consumer transaction within a stated or reasonable time frame by failing to deliver the pick-up’s title to Payne.

COUNT II

VIOLATIONS OF FEDERAL MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT, 49 U.S.C. §32701 *et seq.* AND INDIANA CODE §9-19-9-1 *et seq.*

13. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 above.

14. On July 24, 2006, Defendant Black, with intent to defraud, failed to disclose the pick-up's true mileage to Payne, in violation of 49 U.S.C. §32705, 49 C.F.R. §580.5 and Ind. Code §9-19-9-7(2).

15. On or around July 21, 2006 and July 24, 2006, Defendant, with intent to defraud, made false statements, as to the pick-up's true mileage, in violation of 49 U.S.C. §32705, 49 C.F.R. §580.5 and Ind. Code §9-19-9-7(2).

16. Violations of 49 U.S.C. §32705, (formerly 15 U.S.C. §1988), are deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §9-29-9-7.

17. Pursuant to Ind. Code §9-19-9-7, Defendant is subject to a civil penalty of not more than \$1,500.00 for each violation.

18. Pursuant to 49 U.S.C. §32709(c), the Attorney General may seek an injunction and recover 3 times the consumer's actual damages or \$1,500.00, whichever is greater.

COUNT III

INCURABLE DECEPTIVE ACTS

19. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. Defendant's acts representations referenced in paragraphs 4, 5, 6 and 7 constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

IRREPARABLE INJURY

21. The acts and misrepresentations as set forth above will cause irreparable injury unless the Defendant is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*, 49 U.S.C. §32701 *et seq.*, 49 C.F.R. §580 *et seq.*, and Ind. Code §9-19-9-1 *et seq.*

RELIEF

WHEREFORE, Plaintiff, State of Indiana, seeks judgment as follows:

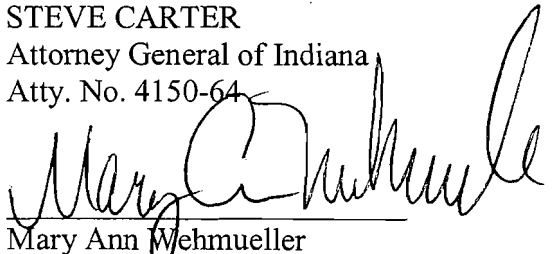
- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining Defendant, his agents, representatives, employees, successors, assigns, and all persons acting or claiming to be acting on his behalf, through any corporate or business name or device, from:
 1. Failing to disclose the true mileage of vehicles offered for sale;
 2. Making false statements in relation to odometer disclosures required by 49 U.S.C. §32705 and 49 C.F.R. §580.5; and
 3. Failing to deliver vehicle titles as required by Ind. Code §9-17-3-3;
 4. Misrepresenting the benefits and characteristics of consumer transactions; and
 5. Misrepresenting his ability to complete the subject of consumer transactions within a stated or reasonable time frame.

- b. Cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- c. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in the amount of \$6,300.00 to Ryan Payne;
- d. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- e. Civil penalties of \$1,500.00 per each violation of Ind. Code §9-19-9-7;
- f. Civil penalties pursuant to Ind. Code §24-5-0.5-4(g) on Counts I and II of the Plaintiff's complaint, for the Defendant's knowing violations of Ind. Code §24-5-0.5-3(a)(1), 3(a)(10) and Ind. Code §9-19-9-7, in the amount of \$5,000.00 per violation;
- g. Civil penalties pursuant to Ind. Code §24-5-0.5-8 on Counts III of the Plaintiff's complaint, for the Defendant's intentional violations of Ind. Code §24-5-0.5-3(a)(1), 3(a)(2), and Ind. Code §9-19-9-7, in the amount of \$500.00 per violation; and
- h. All other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:


Mary Ann Wehmüller
Deputy Attorney General
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